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The Honorable Barbara J. Rothstein

8 **UNITED STATES DISTRICT COURT**
9 **WESTERN DISTRICT OF WASHINGTON**
10 **AT SEATTLE**

11 STATE OF WASHINGTON,

12 Plaintiff,

13 v.

14 BETSY DeVOS, in her official capacity as
Secretary of the United States Department of
15 Education; and the UNITED STATES
DEPARTMENT OF EDUCATION, a federal
agency,

16 Defendants.
17

NO. 2:20-cv-01119-BJR

PLAINTIFF STATE OF
WASHINGTON'S MOTION TO
RECONSIDER THE OCTOBER 26,
2020 MINUTE ORDER AND TO
ENTER JUDGMENT FOR
WASHINGTON

18 **I. INTRODUCTION**

19 This Court issued a preliminary injunction enjoining the Defendants' April 30, 2020
20 Guidance (April Guidance) and July 1, 2020 interim final rule (IFR). The Court's October 26,
21 2020 minute order dismissing this case supersedes that preliminary injunction. While there is a
22 decision from the District of Columbia vacating the IFR in *NAACP v. DeVos*, No. 20-cv-1996
23 (DLF), 2020 WL 5291406 (D.D.C. Sept. 4, 2020), Washington's interests are not sufficiently
24 protected by that decision, where enforcement of that decision imposes additional steps on
25 Washington to file a new case and bring emergency motions, as compared to simply enforcing
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PLAINTIFF STATE OF WASHINGTON'S
MOTION TO RECONSIDER THE
OCTOBER 26, 2020 MINUTE ORDER
AND TO ENTER JUDGMENT FOR
WASHINGTON
NO. 2:20-cv-01119-BJR

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its own judgment. With approximately two months still left in the current administration, Washington prefers to have its own judgment in the event it needs to seek enforcement. The Court should withdraw its October 26, 2020 minute order and convert the preliminary injunction into a final judgment in favor of Washington.

II. FACTS

In July 2020, Washington filed suit against the Defendants, challenging the April Guidance and the IFR, which interpreted the CARES Act provisions for providing funding to primary and secondary education. ECF # 1. This Court preliminary enjoined both the April Guidance and the IFR on August 21, 2020. ECF # 54 at p. 21.

On September 4, 2020, the United States District Court for the District of Columbia entered a summary judgment order vacating the IFR. *NAACP*, 2020 WL 5291406. Following that decision, after a status conference addressing the impact of the case, Washington moved for summary judgment. ECF # 64. Defendants did not notify the Court whether they intended to appeal, as this Court ordered, and Defendants have submitted no response to the summary judgment motion. The Defendants ultimately publicly indicated that they would not appeal the District of Columbia district court's summary judgment decision. On October 9, the Department issued Guidance (October Guidance) that recognized the vacatur of the rule but also included similar, if not identical provisions as in the April Guidance.¹

Washington and other Plaintiff States have had discussions with Defendants about the possibility of an agreed judgment. During those discussions, this Court entered a minute order dismissing the case, finding that the District of Columbia district court's decision had effectively enjoined the rule at issue in this case. ECF # 65. Washington now brings this motion to withdraw that order and convert its preliminary injunction into a final judgment.²

¹Available at <https://oese.ed.gov/files/2020/10/Providing-Equitable-Services-under-the-CARES-Act-Programs-Update-10-9-2020.pdf> (last accessed Nov. 9, 2020).

²The Defendants informed the Washington that their position is: "the claim presented in this case is moot because Plaintiff has received all the relief requested in its Complaint. There is, therefore, no reason for the Court

III. ARGUMENT

When this Court preliminarily enjoined the April Guidance and the IFR, it made clear its views on Defendants' legal errors. As the Court is aware, other courts came to similar conclusions. When this Court dismissed the case as moot because of those decisions, it superseded its preliminary injunction order. While there is a final order from another court vacating the IFR, Washington was not a party to that case. With this case now dismissed and no preliminary injunction in force, Washington would have to file a new suit and engage in motions practice if the Defendants fail to follow the terms of the District of Columbia's decision. This means that Washington would have to pass unnecessary hurdles, particularly where there is about two months left until a change in administrations.

Consequently, Washington respectfully requests that the Court enter judgment in this case. In that case, if Defendants fail to follow the Court's ruling, Washington has a quicker and easier process to seek enforcement of the judgment. Fed. R. Civ. P. 70; *see California v. Azar*, 911 F.3d 558, 583–84 (9th Cir. 2018), *cert. denied sub nom. Little Sisters of the Poor Jeanne Jugan Residence v. California*, 139 S. Ct. 2716, 204 L. Ed. 2d 1111 (2019) (explaining need for district court to address claims despite an injunction in another circuit). Accordingly, because this Court has already engaged in the legal analysis, the Court should reconsider its order dismissing the case and enter a judgment in favor of Washington that enjoins the April Guidance and IFR.

IV. CONCLUSION

The Court should withdraw its October 26 minute order dismissing the case and enter judgment for Washington.

to reconsider its dismissal; should Plaintiff proceed with filing such a motion, please indicate that Defendants oppose on the ground that the case is moot.”

1 DATED this 9th day of November 2020.

2 ROBERT W. FERGUSON
3 Attorney General

4 *s/ Paul M. Crisalli*

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DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF System, which will serve a copy of this document upon all counsel of record.

DATED this 9th day of November 2020, at Seattle, Washington.

s/ Paul M. Crisalli

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Assistant Attorney General